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IN THE

Supreme Court of the United States

October Term, 1973

No. 72-1205

STOVE, FURNACE & ALLIED APPLIANCE WORKERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, Local 123-B,

Petitioner,

vs.

GAFFERS & SATTLER, INC.,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Petitioner,

vs.

GAFFERS & SATTLER, INC.,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner, Stove, Furnace and Allied Appliance Workers' International Union of North America, AFL-CIO, Local 123-B, prays that a writ of certiorari issue to review a final order of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on December 5, 1972, reversing the order of the district court made pursuant to Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. 185, directing arbitration of a grievance under a collective bargaining agreement between petitioner and Gaffers & Sattler, Inc.

Opinions Below.

The Court of Appeals' order was entered on December 5, 1972, and the order and opinion are printed in Appendix A hereto.

The order directing arbitration and findings of fact and conclusions of law issued by the district court on October 26, 1970 are printed in Appendix B hereto.

Jurisdiction.

The jurisdiction of this Court to review the order of the Court of Appeals reversing the district court's order requiring arbitration is invoked under 28 U.S.C. Section 1254(1).

Questions Presented.

1. In a proceeding to compel arbitration under a collective bargaining agreement in which it appears to the court that an arbitration award in favor of the party seeking arbitration would be contrary to federal labor policy, should the court refuse, as it did in the instant case, to order arbitration, or should the court (a) order arbitration and allow the arbitrator to resolve the merits of the dispute and to attempt to fashion appropriate and lawful remedies if he rules for the party seeking arbitration, and (b) make the judicial determination as to the enforceability of such award only if and when an award is before the court?

2. Does the very process of arbitration between an employer and a union representing employees at a plant which has been (or is to be) shut down and its equipment and work transferred to another plant of the employer violate national labor policy merely because such arbitration involves the employees' claim to transfer to or assert other job rights at the other plant and a different union represents the workers at that other plant?

3. Does a union lose its right to enforce its collective bargaining agreement and arbitrate the question of the employees' right to follow the work upon the shutdown of one plant and the transfer of work and equipment to another plant owned by the same employer merely because a different union represents the workers at the other plant, as the court held, and are the employees thus left without any remedy?

4. Where the law permits arbitration of employees' claims to follow work to a non-union plant owned by the same employer upon a shutdown of their plant and transfer of work to the other plant (*Monroe Sanders Corp. v. Livingston*, 377 F. 2d 6 (2d Cir. 1967), cert. denied, 389 U.S. 83, 86 S. Ct. 971 (1967); *cf. John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 84 S. Ct. 909 (1964) may the court, as it did here, refuse to permit such arbitration because the other plant is subject to a collective bargaining agreement with another union?

Statute Involved.

Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. 185, provides in relevant part:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Statement of the Case.

Petitioner filed a petition for an order compelling arbitration with the district court, which petition was granted. On appeal, the United States Court of Appeals for the Ninth Circuit reversed the district court's action and remanded with instructions that the proceeding be dismissed.

The relevant facts are as follows: Petitioner union and Gaffers & Sattler, Inc. entered into a collective bargaining agreement in June 1968, covering certain employees at a plant referred to as the Mission plant, located in Los Angeles, California. The agreement contained a grievance and arbitration clause and by its terms remained in effect until June 30, 1971.

Several months after June 1968, Magic Chef, Inc. purchased the Mission plant and combined the Mission plant, its Industry plant, located in the City of Industry, California, and other assets into one subsidiary, called Gaffers & Sattler, Inc., the employer in this case. The collective bargaining agreement was assumed by the employer and given full force and effect.

In November, 1969, the employer announced that it would be closing the Mission plant and expanding its Industry plant. In October 1970, the Mission plant was closed and certain of its equipment and all or some of its operations were transferred to the Industry plant, which had been expanded for that purpose.

Prior to the closing of the Mission plant, petitioner union demanded that the employees at the Mission

plant be allowed to retain the benefits under the June 1968 agreement and be allowed to follow their work to the Industry plant. The employer refused, and took the position, which it still maintains, that any Mission employees hired at the Industry plant would be considered new employees at the Industry plant and as such entitled only to benefits as new employees under the collective bargaining agreement between the employer and Teamsters Local 196, which union was the collective bargaining representative at the Industry plant. Petitioner union requested arbitration of the dispute raised by its demands but the employer refused to arbitrate the issue, whereupon the instant proceeding to compel arbitration was initiated.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals Decision Is in Conflict With Applicable Decisions of This Court.

The Court of Appeals determined, *inter alia*, that arbitration should not be ordered because any arbitration award in favor of petitioner would contravene national labor policy and therefore would not be enforced by a court. The Court of Appeals relied on its earlier decision in *Int'l Assn. of Machinists v. Howmet Corp.*, 466 F. 2d 1249, 1253-1255 (9th Cir. 1972).

The decision of the Court of Appeals conflicts with the decisions of this Court in the *Steelworkers Trilogy** and *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 84 S. Ct. 909 (1964).

The *Steelworkers* Trilogy established that the policy of the national labor law could be effectuated only if arbitration, "the means chosen by the parties for settlement of their grievances under the collective bargaining agreement is given full play" (*United Steelworkers of America v. American Mfg. Co., supra*, at 566). In its Trilogy decisions, this Court held that a court's only function with respect to a petition to compel arbitration is to determine whether the claimed grievance is, on its face, governed by the agreement. (*Id.* at 567-568.)

In the instant case, the Court of Appeals exceeded this narrow function and in so doing seriously jeopardized the arbitration process. Moreover, the Court of

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**United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564, 80 S. Ct. 1343 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S. Ct. 1347 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358 (1960).

Appeals arrogated to itself a function expressly reserved by this Court to the arbitrator.

It is precisely this type of judicial interference in the arbitral process which this Court has sought to prevent. In *United Steelworkers of America v. American Mfg. Co., supra,* at 568, the Court rejected the notion that a court could decline to compel arbitration of even frivolous grievances:

> "The processing of frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware." (See also footnote 6 at 568.)

Weighing the mere possibility that an arbitrator's award may be unenforceable, against the strong federal policy in favor of arbitration, requires a resolution in favor of arbitration in the instant case. Indeed, this is the precise resolution of the balancing of interests adopted in *John Wiley & Sons, Inc. v. Livingston,* 376 U.S. 543, 84 S. Ct. 909 (1964). In *Wiley,* a corporate reorganization (merger) posed the problem of what rights the employees of the old organization had in the new organization and whether such a dispute was arbitrable under a pre-existing collective bargaining agreement with the union representing the employees of the old organization. This Court specifically foresaw the problem that an arbitration award might interfere with the rights of the original employees of the new organization, but determined that "the mere possibility of such problems cannot cut off the union's right to press the employees' claims in arbitration" and that "[w]hile it would be premature at this stage to speculate on how to avoid such hypothetical problems, we have little doubt that within the flexible procedures of arbi-

tration a solution can be reached which would avoid disturbing labor relations in the Wiley plant." (*Id.* footnote 5 at 551.)

In *Monroe Sander Corp. v. Livingston*, 377 F. 2d 6 (2d Cir., 1967) cert. denied 389 U.S. 831, 88 S. Ct. 97 (1967), as in this case, the employer closed one plant and transferred its work to the second plant. The closed plant was represented by a union and the other plant was not. The union demanded arbitration (under its collective bargaining agreement) of the rights of the employees at the closed plant to jobs at the other plant. The court applying the *Wiley* principles, ordered arbitration of the union's claim to jobs even though it appeared that no new jobs would be available. In ordering arbitration the court discussed the possibility that an arbitrator's award might interfere with the rights of the unorganized employees, but, as in *Wiley*, held that the arbitrator should be given an opportunity to fashion an appropriate award, and that the court should intervene only if an award were issued which in fact contravened national labor policy.

A rule which permits a court to examine the merits of a possible arbitration award prior to its issuance will have the undesirable effect of encouraging pre-arbitration challenges to awards, delaying arbitration for years, increasing the cost of dispute resolution, and thus undermining the arbitration process itself.

The serious dangers which inhere in the road opened by the Court of Appeals are illustrated in the very

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circumstances of this case. The Court of Appeals was in fact incorrect in assuming that any award in favor of petitioner would not be enforceable because it would necessarily interfere with the rights of the employees at the Industry plant.

Although the petitioner's demand for arbitration is very broad, it also necessarily includes the limited demand of the right to follow the work from the Mission plant to the Industry plant. Thus, while it might be argued that an award giving job and seniority preference to former Mission employees at the Industry plant in derogation of the existing rights of Industry employees would be an unjustified interference with the rights of the Industry employees, it is clear, for example, that an award which provides that the Mission employees have job rights in any new jobs which may be created at the Industry plant as a result of the transfer of their work to the Industry plant would in no way interfere with or diminish the rights and benefits of the Industry employees.*

Moreover, the significant issue is not the scope of the demands made in arbitration and whether those demands conflict with national labor policy, but the scope of the relief which might be awarded by an arbitrator and whether that relief conflicts with national

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*We do not concede that an award which gives seniority or job preference to the employees of the closed plant at the other plant would necessarily contravene national labor policy. Depending on the facts of the case, dovetailing of the seniority of the two groups of employees or other equitable adjustment of the interests of the two groups might be proper. (See Note, 66 Col. L. Rev. 967 (1966).)

labor policy. Thus, even though a party might demand certain relief, an arbitrator may fashion relief quite different from that demanded and relief which is wholly consistent with national labor policy. While we have suggested only one solution which the arbitrator could adopt without interfering with the rights of the Industry employees, there are, no doubt, other solutions to the problem which could benefit the Mission plant employees without harming the Industry employees. Indeed, one of the reasons which impelled this Court to favor arbitration as the primary means of solving labor disputes is the expertise of labor arbitrators, their knowledge of industrial life, and their ability to fashion imaginative solutions appropriate for the particular problem in its industrial setting.

The Court of Appeals further failed to consider the concern of national labor policy for employee security in situations such as this where industrial reorganization, over which the employee has no control, leaves him jobless. Unless petitioner union is permitted to arbitrate the instant dispute, the Mission plant employees are without any job rights at the Industry plant even though new jobs may be created at the Industry plant as a result of the transfer of their work from the Mission plant to the Industry plant. Without arbitration, the employer is free to refuse to hire all Mission employees at its Industry plant even though jobs may be available and even though the collective bargaining agreement with the petitioner may require him to hire the Mission employees. The ruling of the Court of Appeals thus leaves the Mission employees without a remedy for what may be a wilful breach of a critical provision of the collective bargaining agreement.

2. The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court.

In *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 84 S. Ct. 909 (1964), this Court held that when a business, the employees of which are represented by a union, is merged with another business, the employees of which are not represented by a union, the union is entitled to arbitrate the rights of its members in the new business under a pre-merger collective bargaining agreement.* *Wiley* did not consider the question of whether arbitration should be ordered if a different union represents the employees of the other business involved in the merger, or, as here, of the reorganized plant.

The Court of Appeals in the instant case held that because a different union represents the employees at the reorganized plant, arbitration may not be ordered. The Court of Appeals for the Second Circuit reached a similar result under somewhat different circumstances in *McGuire v. Humble Oil & Refining Co.*, 355 F. 2d 352 (2d Cir. 1965), cert. denied 384 U.S. 988, 86 S. Ct. 1889 (1966), but in a later case, *Monroe Sander Corp. v. Livingston, supra*, appeared to question the correctness of that decision, citing Note, 66 Col. L. Rev. 967 (1966), which strongly criticized *McGuire*.

The issue of whether arbitration should be required when there is a different union representing the employees at the reorganized plant needs clarification by

Monroe Sander Corp. v. Livingston, supra, held that the *Wiley* rule applies when the employer closes one plant and transfers its operations to another plant as well as when two businesses are merged.

this Court. We believe the proper rule to be that the *Wiley* principle that arbitration is appropriate applies whether or not there is another union at the employer's plant to which work and equipment are transferred.

Wiley reaffirmed the rule established by the *Steelworkers Trilogy* that arbitration should be rejected only if other "considerations compellingly so demand." (*Wiley, supra,* at 550-551.) In this case, no considerations exist which compellingly demand a rejection of arbitration. Indeed, in this case, as in *Wiley,* relevant considerations demand that arbitration be ordered.

A comparison of the relevant considerations in *Wiley* and this case demonstrates that the result in this case should be the same as in *Wiley.* Clearly, the Mission employees in this case are at least as much in need of protection as were the employees for whom the union was seeking arbitration in *Wiley.* As in *Wiley,* unless petitioner union is permitted to represent the employees' interests, there will be no union to represent these interests since the Industry union cannot represent the Mission employees unless and until they are employed at that plant.

The considerations which the Court of Appeals relied on in rejecting arbitration are neither real nor compelling. The court assumed that arbitration would cause industrial strife at the Industry plant because it would interfere with the exclusive bargaining representative's right to represent Industry employees and because any award favorable to Mission employees would necessarily be harmful to Industry employees. Such strife, however, is wholly illusory both because the Industry union does not represent Mission employees not yet employed at the Industry plant and because an

award in favor of the Mission employees in the form described earlier could not in any way injure Industry employees. The most such an award would do is to give Mission employees priority as to newly created Industry jobs over outsiders.

Concededly, a serious legal issue exists with respect to an arbitrator's right to issue an award in derogation of the rights of employees at a plant to which work and equipment are transferred. That issue exists whether or not there is a union at that plant. There are a number of solutions which this Court should consider. Clearly, the solution adopted by the court below, that the employees at the plant which is shut down lose all of their rights when there is a union at the other plant is the worst possible one. That solution is particularly anomalous since those same employees' rights are preserved where the other plant is non-union.

At the very least the employees are entitled to have their rights under their contract determined by an arbitrator. If the arbitrator determines that such rights exist, he may fashion remedies which do not interfere with the contract rights of the other employees, including the award of damages. He may also issue an award which appears to affect the rights of others and allow the employer to attempt to resolve the problem with the other employees or their representative. The court could, if necessary, stay enforcement of the award while the parties attempt to resolve whatever problems may arise. Normally, such problems would be resolved once the parties' rights were determined. In any event, where the employer has entered into conflicting agreements and granted conflicting rights to two groups of employees, some procedure must be developed whereby all affected

parties will have some measure of protection. One approach, which has been suggested, and which has considerable merit, is tripartite arbitration.

Whatever the ultimate resolution of these problems, it seems clear that in view of the unsettled and conflicting state of the law and in view of the increasing number of mergers, consolidations, plant closings and relocations which affect the basic job rights of innumerable workers, this Court should set forth rules which will permit an orderly and equitable method of resolving such disputes.

Conclusion.

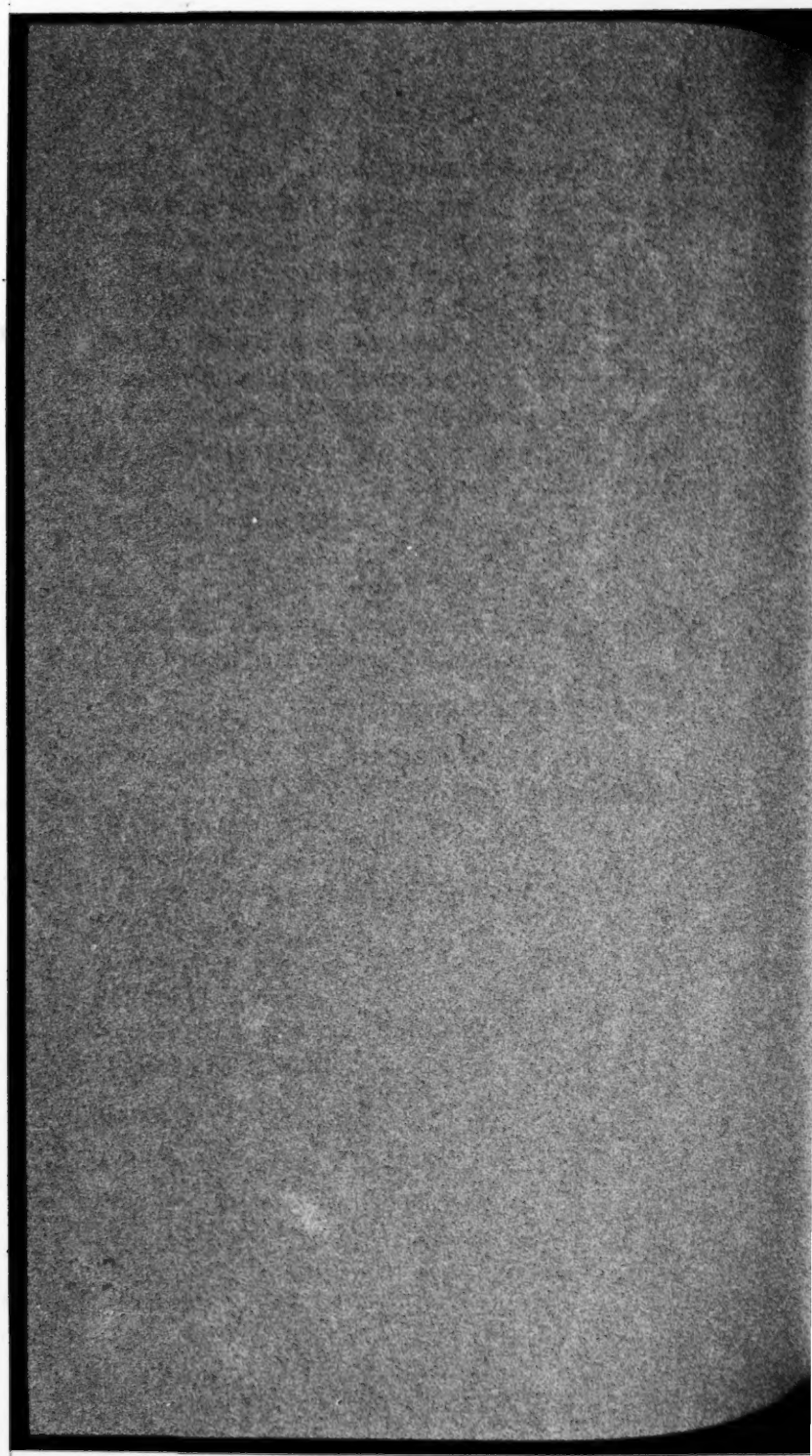
For the foregoing reasons, it is urged that this petition for writ of certiorari be granted.

Respectfully submitted,

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March 2, 1973.



APPENDIX A.

In the United States Court of Appeals, for the Ninth Circuit.

Stove, Furnace and Allied Appliance Workers International Union of North America, AFL-CIO, Local 123-B, Plaintiff-Appellee, vs. Gaffers & Sattler, Inc., Defendant-Appellant. No. 26,942.

On Appeal from the United States District Court for the Central District of California.

Filed: Dec. 5, 1972.

Before: MERRILL and GOODWIN, Circuit Judges, and SKOPIL, District Judge*

Per Curiam:

Gaffers & Sattler appeals from an order directing it to submit to arbitration under its collective bargaining contract with appellee union.

The identical issue here presented—whether it was proper to order arbitration under the circumstances—on facts remarkably similar to those before us was recently decided by this court in *International Association of Machinists v. Howmet Corp.*, 466 F.2d 1249 (9th Cir. Sep. 11, 1972). There, as here, we were faced with employer successorship; closure of one plant; efforts of the bargaining representative at the closed plant to enforce its contract as to its members employed at a second plant in disregard of that plant's bargaining representative and contract.

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*Honorable Otto R. Skopil, Jr., United States District Judge of Oregon, sitting by designation.

There we held that under these circumstances arbitration should not be compelled, because "An award issued by the arbitrator which gave the union any relief on these issues would, we believe, foster rather than alleviate industrial disharmony by forcing the employer to arbitrate with one union issues which touched the very heart of the employer's collective bargaining agreement with another union." ..... F.2d at .....

Reversed and remanded with instructions that these proceedings be dismissed.

APPENDIX B.

Order Directing Arbitration.

United States District Court, Central District of California.

Stove, Furnace & Allied Appliance Workers, International Union of North America, AFL-CIO, Local 123B, Petitioner, v. Gaffers & Sattler, Inc., Respondent. Civil Action No. 70-1844-HP.

Filed: Oct. 26, 1970.

This cause having been submitted to the Court for decision on October 8, 1970:

And the Court having considered the petition, response, exhibits, memoranda and supplemental memoranda of points and authorities, and having heard oral argument of counsel;

And it appearing to the Court that the grievance of which arbitration is demanded, namely,

> "That Union protests the Company's position that after October 1, 1970, the Agreement between the Company and the Union will not apply to a re-located site of the Plant in the City of Industry. The Union takes the position that the Agreement in its entirety, every Section and clause thereof, applies and will apply to the Company's operations in the City of Industry Plant and that the removal of machinery, equipment and manufacturing processes, employees' supervision and all other accouterments of production, constitutes a plant relocation and not the cessation of operations and, therefore, the contract between the Union and the Company will apply to the City of Industry plant or a portion thereof, which is a re-location of the Mission Facilities Plant."

constitutes a dispute as to the application of the Collective Bargaining Agreement of July 1, 1968, between the parties, as defined in Article VIII (A) of that agreement.

IT IS ORDERED that respondent immediately proceed to arbitration of this grievance, in the manner provided in Article VIII (C) of said Collective Bargaining Agreement.

IT IS FURTHER ORDERED that petitioner recover of respondent its costs of action.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order, by United States mail, upon the attorneys of record for the parties appearing in this cause.

Dated: October 26, 1970.

Harry Pregerson
United States District Judge

Findings of Fact and Conclusions of Law.

United States District Court, Central District of California.

Stove, Furnace & Allied Appliance Workers, International Union of North America, AFL-CIO, Local 123-B, Petitioner, v. Gaffers & Sattler, Inc. Respondent. Civil Action No. 70-0844-HP.

This cause came on regularly for hearing on September 28, 1970 before the Court, and the Court having considered the Petition, response, exhibits, memoranda and supplemental memoranda of Points and Authorities, and having heard the arguments offered by the respective parties, and the cause having been submitted for decision, and the Court being fully advised of the premises, makes the following:

FINDINGS OF FACT

It is true that:

1. Petitioner is a labor organization with offices in Los Angeles County, California.

2. At all times herein relevant the respondent was and is in industry affecting commerce within the meaning of Title III, Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. 185, 61 Stat. 156.

3. The petitioner was and is at all times relevant an unincorporated association functioning as a labor organization within the meaning of Title III, Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. 185 61 Stat. 156.

4. Petitioner and respondent entered into a written Collective Bargaining Agreement on or about July 1,

1968 covering the wages, hours and working conditions of the respondent's employees at its Mission plant located at 12611 South Crenshaw Boulevard, Hawthorne, California, and that said Agreement was in full force and effect at all times material hereto.

5. A dispute has arisen between the petitioner and respondent as to the application of the Collective Bargaining Agreement of July 1, 1968, as defined in Article VIII (A) of that Agreement.

6. Petitioner has filed a timely grievance as follows:

> "The Union protests the Company's position that after October 1, 1970, the Agreement between the Company and the Union will not apply to a relocated site of the Plant in the City of Industry. The Union takes the position that the Agreement in its entirety, every Section and clause thereof, applies and will apply to the Company's operations of machinery, equipment and manufacturing processes, employees' supervision and all other accouterments of production, constitutes a plant relocation and not the cessation of operations and, therefore, the contract between the Union and the Company will apply to the City of Industry plant or a portion thereof, which is a re-location of the Mission Facilities Plant."

7. Said grievance has not been resolved through the procedures set forth in Article VIII (B), and there exists a dispute as to the meaning, application or interpretation of the Agreement and the grievance is a proper subject for arbitration.

8. The petitioner has refused to submit the grievance to arbitration as required by Article VIII (C) of the Agreement.

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9. The respondent is required to arbitrate the aforesaid grievance in accordance with the terms and provisions set forth in Article VIII (C) of said Collective Bargaining Agreement.

From the foregoing facts, the Court makes the following:

CONCLUSIONS OF LAW

1. The petitioner is an unincorporated association within the meaning of Title III, Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. 185 61 Stat. 156.

2. Respondent is an industry affecting commerce within the meaning of Title III, Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. 185 61 Stat. 156, and this Court has jurisdiction by virtue of the provisions of the aforementioned Act.

3. A Collective Bargaining Agreement between the parties was entered into July 1, 1968, has been and is in full force and effect at all times herein relevant.

4. The petitioner filed a timely grievance as follows:

> "The Union protests the Company's position that after October 1, 1970, the Agreement between the Company and the Union will not apply to a re-located site of the Plant in the City of Industry. The Union takes the position that the Agreement in its entirety, every Section and clause thereof, applies and will apply to the Company's operations of machinery, equipment and manufacturing processes, employees' Supervision and all other accouterments of production, constitutes a plant re-location and not the cessation of operations and,

therefore, the contract between the Union and the Company will apply to the City of Industry plant or a portion thereof, which is a re-location of the Mission Facilities Plant."

Said grievance is subject to arbitration pursuant to Article VIII (A). The petitioner is entitled to have said grievance submitted to arbitration in the manner provided in Article VIII (C) of the Collective Bargaining Agreement.

5. That Judgment be entered in favor of the petitioner based upon the Findings of Fact and Conclusions of Law. Dated October 26, 1970.

HARRY PREGERSON
UNITED STATES DISTRICT JUDGE

Approved as to form:
TYRE & KAMINS
BY